

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
 AND
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.1379/PUN/2016
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Maya Entertainment Ltd.,
 Aptech House, A – 65, MIDC,
 Marol, Andheri (E),
 Mumbai – 400093

PAN : AAFCA8287M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
 Circle – 1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N E

Revenue by : Shri Piyush Kumar Singh Yadav

सुनवाई की तारीख / Date of Hearing : 10-03-2022

घोषणा की तारीख / Date of Pronouncement : 10-05-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 31-03-2016 passed by the Commissioner of Income Tax (Appeals)-1, Pune [‘CIT(A)'] for assessment year 2010-11.

2. We find no representation on behalf of the assessee nor any application filed seeking adjournment. Thus, the assessee called absent

and set ex-parte. Therefore, we proceed to dispose of the appeal by hearing the ld. DR and perusing the material available on record.

3. The only issue is to be decided is as to whether the CIT(A) is justified in confirming the disallowance made by the AO on account of depreciation of goodwill of Rs.10,73,646/- in the facts and circumstances of the case.

4. Heard ld. DR and perused the material available on record. We note that the assessee is a company engaged in the business of aviation training and hospitality industry. It imparts training programs ranging from personality development and grooming to high-end professional courses like training for cabin crew, ground staff and cargo handlers for the aviation sector. The assessee entered into an agreement with Avalon Aviation Academy and acquired various assets and liabilities for a lump sum consideration of Rs.75,00,000/- in F.Y. 2005-06. The excess of the consideration over the fair value of these assets on the date of acquisition of Rs.60,85,577/- which was treated by the assessee as goodwill. The assessee claimed the same as depreciation/amortization on the ground that it is a right in the nature of know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature being intangible assets. The AO denied depreciation by holding that the goodwill is not included any specific items and rejected the claim of the assessee and added Rs.10,73,646/- to the income of the assessee. The CIT(A) discussed the issue in Para No. 8 and following its own order for A.Y. 2011-12 confirmed the order of AO. We find a similar issue in assessee's own case for A.Y. 2011-12 came up before this Tribunal and the Tribunal by following the earlier order in assessee's

own case allowed depreciation. The relevant portion of the said order at

Para No. 5 is reproduced here-in-below for ready reference :

“5. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to depreciation on goodwill. We find that identical issue arose in assessee’s own case in A.Y. 2007-08 before the Co-ordinate Bench of the Tribunal. The Co-ordinate Bench of the Tribunal decided the issue in favour of the assessee by holding as under :

“9. We have heard the rival contentions and perused the record. The limited issue arising in the present appeal is in relation to the claim of depreciation on goodwill. The assessee had taken over the sole proprietary concern under the name and style of Avalon Aviation Academy as a going concern as per the agreement dated 09th September, 2006. The said going concern was taken over along with all the assets, liabilities, rights, privileges, pending contracts, permissions, etc. as a slump sale, in an as-is-where-is condition for the good and valuable consideration. As per the term of the agreement the total consideration was fixed at Rs.75,00,000/-. It was agreed between the parties that the sale of the ‘acquired business undertaking’ by the seller to the purchaser pursuant thereto was as and by way of a slump sale and the purchase consideration was a composite purchase consideration for the whole of the acquired business undertaking and no purchase consideration shall be assigned to specific items to the ‘acquired business undertaking’, as per article 2.2 of the agreement. While clarifying and interpreting the term ‘acquired business undertaking’, as per article 1.1.1, it was agreed upon that the seller’s business run under the name and style of Avalon Aviation Academy which is, inter alia, engaged in Aviation and hospitality training; the goodwill relating to the seller’s business; all the rights, assets, current assets and obligation, all intellectual property rights, brands, logos, properties of every kind and description, etc., including the rights in the list of properties set out in Annexure 1; the liabilities of the seller, as on the transfer date as listed in the balance sheet as on 31st March, 2006; the and obligation of the seller under the pending contracts, if any and the employee, shall be taken over. Meaning thereby that by paying the agreed consideration the assessee was not only taking over the business as a going concern but was also taking over all the rights, liabilities, assets, pending contracts benefits and obligation of the current contracts, as bundle of rights. This was in addition to rights of obligation of the seller on the transfer date, the employees of the said concern and also goodwill relating to the seller business. The understanding between the parties was clear and no specific price was attributed to the assets and liabilities since it was a case of sump sum consideration being paid for takeover of the assets. The copy of the agreement is placed at pages 27 to 40 of the paper book. Under such facts and circumstances the assessee while filing the return of income had worked out the excess consideration over the value of the assets and liabilities at Rs.60,85,577/-, as under :

<i>Particulars</i>	<i>Fair Value (Rs.)</i>
<i>Fixed Assets</i>	<i>10,59,825</i>
<i>Current Assets</i>	<i>5,81,943</i>
<i>Current Liabilities</i>	<i>(2,27,345)</i>
<i>Net Assets</i>	<i>14,14,423</i>
<i>Consideration</i>	<i>75,00,000</i>
<i>Goodwill</i>	<i>60,85,577</i>

10. On such goodwill, the assessee claimed depreciation which has been denied by the authorities below holding that the excess amount over assets and liabilities is not goodwill. This is the finding of the Commissioner of Income Tax (Appeals). The Assessing Officer had denied the depreciation as goodwill was not part of intangible assets u/s. 32(1) of the Act. The depreciation was allowable only on tangible assets and not intangible assets. The basis for disallowance was the decision of the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. M/s. Techno Shares Stocks Ltd. & Others (supra) which was against the assessee. However, the Hon'ble Supreme Court in Techno Shares & Stocks Ltd. & Ors. Vs. Commissioner of Income Tax (supra) has reversed the findings of Hon'ble Bombay High Court and consequently the ratio applied by the Assessing Officer and the Commissioner of Income Tax (Appeals) is not available for application. In any case the Hon'ble Supreme Court in later decision in Commissioner of Income Tax Vs. Smifs Securities Ltd. (supra) had held that goodwill is an intangible asset as per Explanation 3(b) to section 32(1) of the Act and consequently the assessee is entitled to claim the depreciation on such goodwill. Applying the said ratio we hold that the assessee is entitled to claim the depreciation on goodwill.

11. Now, coming to the stand of Commissioner of Income Tax (Appeals) that the excess amount paid by the assessee out of lump sum consideration is not goodwill but something else. The Hon'ble Delhi High Court in Triune Energy Services Private Limited & Ors. Vs. Deputy Commissioner of Income Tax & Ors. (supra) on similar issue of slump sale as per business transfer agreement wherein lump sum consideration was paid, had held that the balance consideration after deducting the value of assets and liabilities is goodwill which expression "goodwill" subsumes within it a variety of intangible benefits that were acquired when a person acquires a business of another as a going concern. It was further held that "it is well established that 'goodwill' is an intangible asset, which is required to be accounted for when a purchaser acquires a business as a going concern by paying more than the fair market value of the net tangible assets, that is, assets less liabilities". The Hon'ble High Court therefore held that goodwill included a host of intangible assets, which a person acquires, on acquiring a business as a going concern and valuing the same at the excess consideration paid over and above the value of net tangible assets is an acceptable accounting principle and thus, further exercise to value the goodwill is not warranted. In this regard reliance was placed on the ratio laid down by the Hon'ble Supreme Court in Commissioner of Income Tax Vs. Smifs Securities Ltd. (supra) and on Commissioner of Income Tax Vs. B.C. Srinivasa Setty reported in (1981) 128 ITR 294 (SC) and the claim of the assessee was allowed.

12. The facts and the issue arising in the present appeal before us are identical to the facts and issue before the Hon'ble Delhi High Court (supra) and applying the said principle we hold that the balance consideration out of slump sale consideration after adjusting the value of asset and liabilities is, the value of goodwill in the hands of the assessee, which is intangible assets, on which the assessee is eligible to claim the depreciation. Accordingly, we hold so.

13. Before parting we may refer to reliance placed before us by the learned Departmental Representative for the Revenue on the ratio laid down in Chowgule & Co. (P.) Ltd. Vs. Assistant Commissioner of Income Tax (supra) which do not stand after the ratio being laid down

by the Hon'ble Delhi High Court. It may be qualified herein itself that the facts before the Hon'ble Delhi High Court and the facts of the present case are identical and consequently the ratio laid down by the Hon'ble Delhi High Court shall prevail. Accordingly, we direct the Assessing Officer to allow depreciation on goodwill. The grounds of appeal raised by the assessee are allowed."

5. In the light of above, following the order of this Tribunal in assessee's own case for A.Y. 2011-12, thus, we hold that the assessee is entitled to claim depreciation on goodwill. The order of CIT(A) is not justified and it is set aside. Thus, the ground raised by the assessee is allowed.

6. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 10th May, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th May, 2022.

रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Pune
4. The Pr. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune